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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 236

WILLIAM EVANS, ETC., ET AL.,
Appellants,

v.

TILLYE CORNMAN, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

REPLY BRIEF OF THE APPELLANTS

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ARGUMENT

THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES DOES NOT REQUIRE THAT RESIDENTS OF FEDERAL ENCLAVES, OVER WHICH CONGRESS RETAINS EXCLUSIVE JURISDICTION, BE AFFORDED THE RIGHT TO VOTE IN THE STATE IN WHICH THE ENCLAVE IS SITUATED.

In its original brief the Appellants demonstrated (at pp. 13-22) the instability of both of the premises upon which the lower court based its opinion; namely that:

1. The legislative retrocessions by Congress have not in any way limited the continuing exclusive federal jurisdiction over the enclaves in question.
2. The limited legislative activity of the State of Maryland with respect to residents of federal enclaves

does not require the State to extend voting rights to these residents.

The Appellees, in their recently filed brief, appear to have conceded the correctness of the Appellant's position on the first point.

At page 11 of their brief the Appellees state that "the power of exclusive jurisdiction, as created by the Constitution, is indeed, as Appellants put it, 'unimpaired and unencumbered' ". Curiously, the Solicitor General, the Appellees' newly found ally, takes an entirely different tack on this very point. At page 7 of his *amicus curiae* brief the Solicitor General states that "[i]n short, it cannot be maintained that the federal government has *exclusive jurisdiction* over the area." To make matters more confusing, the Appellees' position on this point represents a marked departure from that taken by the court below, which position appears to be a middle ground between that of the Appellees and that of the Solicitor General (A. 20-22).

With further reference to this first point, the limited authorities relied upon by the Appellees have already been fully distinguished by the Appellants in their brief. *Howard v. Commissioners of Louisville*, 344 U.S. 624 (1953), cited by the Appellees at pp. 13, 16 and 21, was distinguished at pp. 16-18 of the Appellants' brief. *Carrington v. Rash*, 380 U.S. 89 (1965), cited by the Appellees at pp. 5, 17 and 20 of their brief, was distinguished at page 21. The Appellees also appear to place some reliance upon *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969), and *Cipriano v. City of Houma*, 395 U.S. 701 (1969). In citing these two cases and in arguing (as they do at page 15 of their brief) that Appellees find themselves in a situation analogous to that of "clergymen and other residents of parsonages and persons living on the grounds of hospitals

and other charitable institutions," the Appellees entirely lose sight of the fact that the distinction involved in the case at hand is not between *property owners and non-property owners* but rather between *residents and non-residents* of the State of Maryland.

The Appellees are required to pay State income taxes, sales and use taxes and motor vehicle fuel taxes (pp. 12-15 of Appellees' brief), yet say that they are "deprived of the opportunity of voting for the state legislators who levy all the taxes paid by them" (p. 19). This "taxation without representation" argument was earnestly put forth in *Royer v. Board of Election Supervisors,* 191 A. 2d 446 (Md. 1963), cert. den. 375 U.S. 921 (1963), and was specifically found to be unpersuasive by the Court of Appeals of Maryland (at page 449 of the opinion).

More recently, this identical argument was made by certain residents of the District of Columbia, who urged that the system by which the President appointed three commissioners for the District of Columbia was unconstitutional. The District of Columbia is, of course, also a federal enclave by virtue of the "Seat of the Government" language of Article I, Section 8, Clause 17 of the United States Constitution, which same clause is under discussion in the case at hand. In *Hobson v. Tobriner,* 255 F. Supp. 295 (D.D.C. 1966), petition for review for mandamus denied sub nom., *Hobson v. Gasch* (D.C. Cir. No. 20,838, decided 1966), cert. den. 386 U.S. 914 (1967), the Court rejected the argument that it was unconstitutional for "residents of the District of Columbia [to be] subjected to taxation without representation" pointing out that "the Supreme Court has repeatedly upheld the power of Congress to pass such legislation" (p. 298), citing *Heald v. District of Columbia,* 259 U.S. 114 (1922), and eight other cases beginning with the decision of Chief Justice Marshall in

Loughborough v. Blake, 5 Wheat. 317 (1820). The Court went on to correctly point out (at page 297) that "the effect of cession upon individuals was to terminate their state citizenship [in Maryland and Virginia] and the jurisdiction of the state governments over them." In a related case the Court of Appeals for the District of Columbia found to be "insubstantial" the constitutional claims that "citizens [of the District of Columbia] had not been given opportunity to elect persons by popular vote" as members of the District of Columbia Council and as Mayor-Commissioner. *Carliner v. Commissioner of the District of Columbia*, 412 F. 2d 1090 (D.C. Cir. 1969), cert. den. 38 U.S. L. Week 3219 (Dec. 15, 1969).

These cases not only lay to rest Appellees' "taxation without representation" argument but also stand for the proposition that residents of federal enclaves cease to be residents of the ceding state and possess only such voting rights as have been afforded them by constitutional amendment or congressional action. To the same effect see House Report No. 1698 (1960 *U.S. Code Cong. and Adm. News* 1459), explaining the then proposed 23rd Amendment to the United States Constitution permitting residents of the District of Columbia to vote in national elections for President and Vice President of the United States.

It is interesting to note that in the *Hobson* case the Solicitor General strenuously *opposed* the petition for writ of certiorari filed by the residents of the District of Columbia. In contrast to the position he supports in the pending case, the Solicitor General (at page 4 of his Memorandum for the Respondent in Opposition) challenged the proposition that "representation is inseparable from taxation" and urged that the quantum of voting rights afforded to citizens of the District of Columbia rests squarely within the discretion of Congress. This position is entirely

in harmony with the Appellants' view of the case at hand. See pages 22-27 of the Appellants' brief. The final paragraph of the Solicitor General's Memorandum in the *Hobson* case exactly parallels the view of the present case taken by the Appellants and for this reason merits full quotation (page 6):

> "Finally, the position here espoused should not in any way be viewed as one indicating any opposition by the executive branch to Congress' determining to provide for home rule for the District. Indeed, the President has publicly commended the enactment of such legislation to Congress on several occasions in the recent past. Such a decision however, is beyond peradventure constitutionally committed to Congress, and not to the judicial or executive branches."

CONCLUSION

For the reasons put forth in its original brief and in this reply brief, the Appellants earnestly contend that the decision of the lower court should be reversed.

Respectfully submitted,

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January 19, 1970

PROOF OF SERVICE

I HEREBY CERTIFY that on this 19th day of January, 1970, I mailed by first class mail, postage prepaid, a copy of the Reply Brief of the Appellants, to Richard F. Schifter, Esquire, Strasser, Spiegelberg, Fried, Frank & Kampelman, 1700 K Street, N.W., Washington, D.C. 20006, Attorney for the Appellees, and to Francis X. Beytagh, Jr., Esquire, Assistant to the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530.

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